

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application of)	File Nos. on Attachment A
Tribune Company)	MB Docket No. 10-104
and its Licensee Subsidiaries)	
)	
For Consent to Assignments of)	
License Pursuant to a Plan of)	
Reorganization)	

**PETITION TO DENY OF THE INTERNATIONAL BROTHERHOOD OF
TEAMSTERS**

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June 14, 2010

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

In the above-captioned application (the “Application”), the parties are seeking the Commission’s consent to assign broadcast station and other licenses from subsidiaries of the Tribune Company (“Tribune”) as presently organized to subsidiaries of Tribune as it would be reorganized pursuant to a Plan of Reorganization (“Plan”) developed in Tribune’s Chapter 11 bankruptcy proceeding. Under this Plan, virtually all of Tribune’s stock, which has been owned by a Tribune Employee Stock Ownership Plan (the “Tribune ESOP Plan”), would be distributed to Tribune creditors.

The International Brotherhood of Teamsters (the “IBT”) hereby petitions to deny the Application. As IBT has demonstrated in a still-pending petition for reconsideration, the 2007 transfer of control of the Tribune violated Communications

Act requirements and Commission precedent because it impermissibly separated ownership and control of the company. It made the Tribune's employees the owners of the company, through the Tribune ESOP Plan, but it give a third party, Sam Zell, control of the Tribune and its board. The Tribune's employees have borne the brunt of the failed policies implemented under Mr. Zell, and approving another change in ownership without giving the employees a say would compound the initial error.

In addition, under the Commission's rules, the waivers requested by Tribune of the newspaper/broadcast cross-ownership rule for the Chicago and Hartford-New Haven markets are presumed to be contrary to the public interest. Tribune has not overcome this presumption.

The Commission, therefore, should: (1) deny the Application or hold it in abeyance until Tribune's board has been reconstituted in accordance with Commission requirements and the reconstituted board has had an opportunity to pass upon the Application; and (2) deny Tribune's newspaper/broadcast cross-ownership waiver requests for the Chicago and Hartford-New Haven markets.

II. INTEREST OF THE IBT

The IBT has a strong interest in this proceeding. Its 1.4 million members include approximately 750 persons who work for the Tribune and tens of thousands of members and retirees residing in the affected markets, including the markets for which cross-ownership waivers are being sought. These members' livelihoods, economic well-being, and access to a diversity of news and opinions on public events depend on the

resolution of this proceeding and its impact on the Tribune's newspaper and broadcast ventures.

III. DISCUSSION

A. The Tribune's Employees Are Legally Entitled to Have a Say in the Filing of the Application.

In a Memorandum Opinion and Order released in 2007, the Commission consented, over IBT's objection, to a transfer of control of the Tribune to Sam Zell.¹ IBT has filed a petition for reconsideration of the MO&O.²

The Commission long has held that it violates Section 310(d) of the Communications Act to give third parties control over station personnel, programming, and finances, and it repeatedly has found that ceding such control is contrary to its requirements.³ As shown in IBT's Petition, the transfer of control approved in 2007 did precisely that.⁴ The transfer gave control over the Tribune to a third party, Mr. Zell, who had no ownership interest in the company. The Tribune's employees, who as

¹ *In the Matter of Shareholders of Tribune Company, Transferors, and Sam Zell, et al., Transferees, for Consent to the Transfer of Control of The Tribune Company, and Application for the Renewal of License of LTLA(TV), Los Angeles, California, et al.*, Memorandum Opinion and Order, FCC 07-211, MB Docket No. 07-119 (rel. Nov. 30, 2007) ("MO&O").

² Petition for Reconsideration of the International Brotherhood of Teamsters ("Petition"), MB Docket No. 07-119 (Dec. 12, 2007).

³ See, e.g., *In Re Applications of Southwest Texas Public Broadcasting Council For Renewal of Licenses for Noncommercial Educational Television Stations KLRN, San Antonio, Texas (BRET-800401LS) and KLRU, Austin, Texas (BRET-800401LR)*, 85 F.C.C.2d 713 (1981); *In Re Applications of Alabama Educational Television Commission For Renewal of Licenses*, 50 F.C.C.2d 461 (1975).

⁴ IBT made similar arguments in its filings preceding the release of the MO&O. The Commission has never meaningfully addressed these arguments. It did not rule on the merits of IBT's position in the MO&O because it found, incorrectly, that IBT had not alleged that "the Transferees' proposed

beneficiaries of the Tribune ESOP Plan held 100 percent of the Tribune's stock, were shut out of the governance of the company. The employees: (1) had no role in the selection of the Tribune's directors, who establish company policy and appoint the officers who run the company; and (2) had no opportunity or ability to select the Tribune ESOP Plan trustee, who would vote the plan's Tribune stock, or to replace the trustee.

In addition to violating Section 310(d), shutting the employee-owners out of the Tribune's governance undercut the Commission's policies favoring localism and diversity.⁵ Giving the Tribune's employees a voice in governance would have been the essence of localism, because the employees operate the company's broadcast properties and live and work in the areas that the broadcast properties serve. Similarly, if the employees, who are spread across the country and include members of various minority groups, had been permitted to participate in Tribune management, they could have diversified the viewpoints within the company and contributed to more diverse programming.

By any standard, the 2007 transfer of control giving Mr. Zell control of the Tribune has been a disaster. "Mr. Zell financed much of his deal's \$13 billion of debt by borrowing against part of the future of his employees' pension plan and taking a huge

organizational and governing structure violates any Commission rule or policy or any other statute, rule, or policy." MO&O, ¶ 20.

tax advantage.”⁶ The Wall Street Journal stated at the time that the terms of the deal “raise[d] questions about the company’s ability to service its debt load while navigating the deteriorating newspaper business.”⁷ When the debt could not be serviced, bankruptcy ensued. Even Mr. Zell, whose business practices have earned him the nickname the “grave dancer,”⁸ has conceded that his taking over the Tribune was a “mistake.”⁹

The communities served by the Tribune’s newspapers and broadcast stations have paid a steep price for Mr. Zell’s errors. In the last quarter of 2007, the Tribune cut 700 jobs and reported a \$78 million loss, a reversal from the \$233 million gain a year prior. But that was only the beginning, as thousands more jobs were cut in the following two years.

The employees’ retirement security also suffered. Shortly before the 2007 transfer of control was consummated, Tribune management had converted its defined benefit pension plan to a defined contribution plan. After the Tribune ESOP Plan was established, the company unilaterally reduced its contributions for employees into the plan by 40%. In December 2009, employees received their first ESOP share allocation.

⁵ See Comments of the International Brotherhood of Teamsters, MB Docket No. 07-119 (June 11, 2007) at 6-7.

⁶ A. Sorkin, “Workers Pay for Debacle at Tribune,” *New York Times* (Dec. 9, 2008).

⁷ “Tribune Co.’s Climb to Going Private Gets Steeper,” *Wall Street Journal*, May 25, 2007.

⁸ A. Sorkin, “Workers Pay for Debacle at Tribune,” *New York Times* (Dec. 9, 2008).

⁹ Brandweek (April 27, 2009).

But because Tribune shares were appraised at zero in November, the employees received shares that were worthless.¹⁰

As the Tribune struggled under a \$13 billion debt load, it shed assets and cut back on news bureaus. Newsday was sold to Cablevision,¹¹ which had no experience running a major newspaper. This sale consolidated Long Island's dominant newspaper and its principal cable service provider. The Chicago Cubs and Wrigley Field were spun off.¹² The Tribune Tower was put up for sale, unsuccessfully.¹³ The Baltimore Sun closed all foreign bureaus and eliminated the five county bureaus. The Chicago Tribune and Los Angeles Times no longer have their own foreign bureaus. A once-proud organization has been decimated.

Permitting the Application to go forward will compound the initial mistake of allowing ownership and governance of a broadcast licensee to be separated. The employee-owners were deprived of a say in the installation of Sam Zell as head of the company, notwithstanding Commission policies entitling them to exercise control. The employees-owners then were powerless to act as Mr. Zell drove the company into bankruptcy. Now the employee-owners have been forced to the sidelines once more as the Commission has been presented with an Application proposing to extinguish their ownership interest. If the Application is granted, the company will be turned over to

¹⁰ "Tribune to end ESOP," *Los Angeles Times*, November 4, 2009.

¹¹ R. Perez-Pena, "Cablevision Is Winner of Newsday," *New York Times*, May 13, 2008.

¹² See sports.espn.go.com/chicago/mlb/news/story?id=4499856.

Tribune creditors who are not broadcasters and whose principal interest is recovering the monies they were owed.

It is too late to undo the damage that already has been done, but the Commission can and should correct the error of its grant of the 2007 Zell transfer of control application. The above-captioned Application was developed by a company that was run by Mr. Zell, and the directors he selected, in violation of Section 310(d) and the Commission prohibition against ceding control to third parties. To rectify matters, the Commission should require that the Application be passed upon by a reconstituted board of directors a majority of whom has been selected by the employee-owners who are the beneficiaries of the Tribune's majority shareholder, the Tribune ESOP Plan. Until the reconstituted board has passed on the Application, the Commission can either hold the Application in abeyance or dismiss it.

¹³ Brandweek (April 27, 2009).

B. Waiving the Newspaper/Broadcast Cross-Ownership Rule for the Chicago and Hartford-New Haven Markets Would Be Contrary to the Public Interest.

1. The waiver requests for the Chicago and Hartford-New Haven markets are presumed to be contrary to the public interest.

Requests for waiver of the newspaper/broadcast cross-ownership rule that satisfy certain criteria are presumed to be in the public interest.¹⁴ The presumption is reversed for requests not satisfying these criteria, which are presumed to be contrary to the public interest.¹⁵

In order to qualify for the presumption that a newspaper/broadcast combination is in the public interest:

- The newspaper must be published in a top 20 Nielsen DMA¹⁶;
- The combination must be limited to a daily newspaper and “*one* commercial AM, FM, or TV broadcast station”¹⁷;
- If the commercial broadcast station is a TV station, it must not be ranked among the top four TV stations in the DMA¹⁸; and
- If the commercial broadcast station is a TV station, at least eight independently-owned and operating major media voices must remain in the DMA post-waiver.¹⁹

In the Application, the parties have requested various waivers of the Commission’s cross-ownership and multiple ownership rules. Among other things, they seek waivers of the newspaper/broadcast cross-ownership rule so that the creditors who would become the Tribune’s owners under the plan may own:

¹⁴ See 47 C.F.R. § 73.3555(d)(3).

¹⁵ See 47 C.F.R. § 73.3555(d)(4).

¹⁶ 47 C.F.R. § 73.3555(d)(3).

¹⁷ 47 C.F.R. § 73.3555(d)(3).

¹⁸ 47 C.F.R. § 73.3555(d)(3)(i).

(1) WGN(AM), WGN-TV, and the *Chicago Tribune* in the Chicago DMA; and (2) WTIC-TV, WTXN(TV), and the Hartford Courant in the Hartford-New Haven DMA.

Both of these waiver requests are presumed to be contrary to the public interest. In the case of the Chicago DMA, the waiver request is presumed to be contrary to the public interest because the proposed combination involves more than one commercial broadcast station.²⁰ In the case of the Hartford-New Haven DMA, the waiver request is presumed to be contrary to the public interest because the proposed combination involves more than one commercial broadcast station *and* because Hartford-New Haven is not a top 20 Nielsen DMA.²¹

2. The Tribune has not overcome the presumption against the waiver requests for the Chicago and Hartford-New Haven markets.

The Tribune invokes a provision in the rules under which the presumption against a newspaper/broadcast cross-ownership waiver is reversed if the newspaper or broadcast station has “failed.”²² As the Tribune acknowledges, however, the Commission does not consider a newspaper or broadcast station in bankruptcy to have failed for this purpose unless the bankruptcy proceeding is an involuntary proceeding.²³ That makes the provision inapplicable, because the Tribune’s bankruptcy proceeding is a voluntary one.

¹⁹ 47 C.F.R. § 73.3555(d)(3)(ii).

²⁰ See 47 C.F.R. §§ 73.3555(d)(3) and (d)(4).

²¹ See 47 C.F.R. §§ 73.3555(d)(3) and (d)(4).

²² 47 C.F.R. §§ 73.3555(d)(7)(i).

²³ See Request for Cross-Ownership Waiver (Chicago DMA) at 110.

The Tribune asks that the involuntary bankruptcy requirement not be applied here. It asserts the Commission “required the bankruptcy to be involuntary only because the agency was concerned that licensees might file for bankruptcy for the sole reason of qualifying for a waiver”²⁴ and asks the Commission to find that its bankruptcy filing was not made for this purpose.²⁵

The Tribune has mischaracterized the basis for the involuntary bankruptcy requirement. The Commission adopted this requirement as a prophylactic, because it wanted to avoid having to make determinations as to whether a licensee had filed for bankruptcy to bolster its case for a waiver.²⁶ It is just such a determination that the Tribune seeks. Accordingly, there is no basis for departing from the Commission’s requirement that a bankruptcy must be involuntary to qualify for the failed station/failed newspaper exception, and the Tribune is ineligible for the exception in the Chicago and Hartford-New Haven DMAs.

The Tribune also seeks to overcome the presumption that its Chicago and Hartford-New Haven waiver requests are contrary to the public interest by making showings under the four factors specified in the rules for assessing

²⁴ Request for Cross-Ownership Waiver (Chicago DMA) at 110-111; Request for Cross-Ownership Waiver (Hartford-New Haven DMA) at 101.

²⁵ Request for Cross-Ownership Waiver (Chicago DMA) at 111; Request for Cross-Ownership Waiver (Hartford-New Haven DMA) at 101-102.

²⁶ *Review of the Commission's Regulations Governing Television Broadcasting*, Report and Order, 14 FCC Rcd 12,903, ¶ 76 (1999) (“By excluding voluntary bankruptcy and insolvency proceedings, we hope to avoid the issue of whether an owner has filed for bankruptcy or insolvency simply in order to qualify for a waiver.”).

newspaper/broadcast cross-ownership waiver requests.²⁷ These showings, however, fall short of the “clear and convincing evidence”²⁸ that is required. Rather, there are deficiencies in the showings for both DMAs.

The Tribune relies in part on a Commission finding relating to entities pledging to provide seven or more hours per week of news on broadcast stations.²⁹ This finding, however, is limited to entities that at the time of the pledge are airing no news,³⁰ and neither the Tribune’s Chicago stations nor its Hartford stations fall into that category.

The Tribune’s showing for the Chicago DMA also is flawed because it is premised on the Commission’s lesser concern with combinations involving radio stations.³¹ That lesser concern might have relevance if the Tribune’s waiver request for the DMA were limited to a newspaper and a single radio station. It has no place, however, in assessing a combination that is presumptively against the public interest for the very reason that the combination includes a newspaper, a radio station, *and* a television station.

Finally, the Tribune relies on the amount of local news programming provided by its Chicago and Hartford stations.³² What matters for the purpose of the Tribune’s

²⁷ See 47 C.F.R. §§ 73.3555(d)(5).

²⁸ 47 C.F.R. §§ 73.3555(d)(6).

²⁹ See Request for Cross-Ownership Waiver (Chicago DMA) at 114.

³⁰ See Request for Cross-Ownership Waiver (Chicago DMA) at 114.

³¹ See Request for Cross-Ownership Waiver (Chicago DMA) at 112-113.

³² See Request for Cross-Ownership Waiver (Chicago DMA) at 40-48 ; Request for Cross-Ownership Waiver (Chicago DMA) at 37-48.

waiver requests, however, is the amount of local news programming that the proposed new owners will provide, not the amount that the present owners have provided.

Absent a commitment from the proposed new owners to maintain or improve upon the quantity of local news programming, and no commitment is made in the Application, it is uncertain what the future will bring. The proposed new owners are creditors, not broadcasters, and if the Plan is implemented they will be receiving Tribune equity in lieu of repayment of the monies owed them. One can easily envision the former creditors looking to make substantial cuts in news and other expenditures. The Tribune simply has not made a credible showing as to local news programming.

In light of all of these deficiencies, the Tribune has not satisfied the “clear and convincing” standard, and the presumption remains that the Tribune’s cross-ownership waiver requests for the Chicago and Hartford-New Haven DMAs are contrary to the public interest.

CONCLUSION

Accordingly, and for the foregoing reasons, the Commission should: (1) deny the Application or hold it in abeyance until Tribune's board has been reconstituted in accordance with Commission requirements and the reconstituted board has had an opportunity to pass upon the Application; and (2) deny the newspaper/broadcast cross-ownership waiver requests for the Chicago and Hartford-New Haven markets.

Respectfully submitted,

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS

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June 14, 2010

Attachment A

BAL-20100428AEM

BALCDT-20100428ACD

BALCDT-20100428ACE

BALCDT-20100428ACL

BALCDT-20100428ACM

BALCDT-20100428ACP

BALCDT-20100428ACS

BALCDT-20100428ACT

BALCDT-20100428ACZ

BALCDT-20100428ADA

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BALCDT-20100428ADY

BALCDT-20100428AED

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BALCDT-20100428AEI

BALCDT-20100428AEL

BALTT-20100428ACF

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BALTT-20100428ACN

BALTT-20100428ACO

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BALTT-20100428ACU

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BALTTL-20100428AEF

BALTVL-20100428AEG

BAPTTV-20100428AEJ

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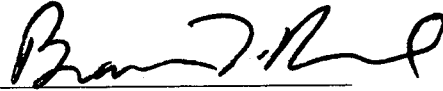
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DECLARATION OF BRADLEY T. RAYMOND

1. I am General Counsel of the International Brotherhood of Teamsters.
2. I am offering this declaration in support of a Petition to Deny of the International Brotherhood of Teamsters ("Petition"), filed on June 14, 2010, in MB Docket No. 10-104.
3. I declare under penalty of perjury that the statements of fact in the Petition are true to the best of my knowledge.



Bradley T. Raymond

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Petition to Deny was sent via electronic mail,* this 14th day of June, 2010, to:

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Dow Lohnes PLLC
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/s/ Joseph A. Godles
Joseph A. Godles

*By agreement with counsel